

Appl. No. 09/770,518
Reply to Final Office Action of 06/02/2006

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REMARKS:

The status of the application according to the pending Office Action is as follows:

Claims 52, 55-56, 62, 64-66, 69-70, 76, 78-80, 83-84, 90, and 92-93 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Petri (EP 0842 605 A1) in view of Belfer *et al.* (U.S. Patent No. 6,106,854).

In view of the following remarks, Applicant respectfully requests reconsideration and withdrawal of all grounds of rejection, and the passage of the above-identified claims to allowance.

Claims 52, 55-56, 62, 64-66, 69-70, 76, 78-80, 83-84, 90, and 92-93 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Petri (EP 0842 605 A1) in view of Belfer *et al.* (U.S. Patent No. 6,106,854).

The Petri reference discloses a method for spraying a disinfectant composition in aerosol form on inanimate surfaces. Particularly, the Petri reference discloses a shear thinning polymeric thickener or a mixture thereof as an essential ingredient (page 4, numbered lines 10-11). It is known to one skilled in the art that when used in a spray solution, a thickener increases viscosity, which in turn increases droplet size and reduces the amount of small, drift-susceptible droplets. The disclosure of the Petri reference is consistent with this common knowledge. The shear thinning polymeric thickener performs a dual function of being not only to prevent or diminish inhalation by the user when it is sprayed onto the surface to be disinfected, but also to provide increased contact time of the composition on vertical surfaces (page 4, numbered lines 15-18). The Petri reference also discloses the incorporation of said shear thinning polymeric thickener into the sprayable liquid composition allows the formation of mist as it is sprayed onto a surface wherein the liquid droplets/particles formed are at least partially not smaller than 10 microns (page 5, numbered lines 14-17). The Petri reference further discloses KELZAN AR® as a preferred shear thinning polymeric thickener that can produce large particle size mist or aerosol when sprayed (page 4, numbered lines 39-40). Comparing with smaller liquid droplets, larger droplets have less surface area per unit volume and therefore experience less moisture

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evaporation. Further, it is also known to one skilled in the art that a viscous solution incorporating a thickener has a reduced evaporation rate because the transportation of the evaporating substances such as solvent or water molecules is retarded. The Petri reference therefore discloses a composition with minimized evaporation. Although the Petri reference discloses that upon spraying the composition onto a hard surface, no visible residues are left, it is different from leaving an essentially dry surface (page 10, lines 12-13). Based on the disclosure of the Petri reference, a delayed drying process is expected.

The Belfer reference discloses an aqueous hard surface disinfectant. In particular, the Belfer reference discloses a disinfectant composition that can be used as a soak, as a flush in washing and rinsing of medical devices (column 3, lines 18-20). The Belfer reference does not teach a flash-dry disinfectant composition.

In contrast, Applicant's independent claims 52, 66, and 80 all recites "...a liquid flash-dry disinfectant composition ..., once sprayed in aerosol form onto an inanimate surface to be disinfected, to flash vaporize to leave an essentially dry surface having the anti-microbial agent deposited thereon ..."

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or reference when combined) must teach or suggest all the claim limitations.

Applicant respectfully submits that at least the above-identified third criterion for establishing a prima facie case of obviousness has not been established with respect to independent claims 52, 66, and 80. Neither Petri nor Belfer, alone or in combination, teach or suggest the limitation of a liquid flash-dry disinfectant composition.

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Accordingly, for at least these reasons, Applicant respectfully submits that independent claims 52, 66, as amended, and 80 are allowable over Petri in view of Belfer.

Because claims 55-56, 62, 64-65, 69-70, 76, 78-79, 83-84, 90, and 92-93 depend, either directly or indirectly, from either claim 52, 66, or 80, and "[d]ependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *In re Fine*, 5 USPQ2d, 1586-1600 (Fed. Cir. 1988), applicant respectfully submits that these claims are allowable as well.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration, withdrawal of all grounds of rejection, and allowance of all of the claims now present in the application in due course.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

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The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to Goodwin Procter LLP Deposit Account No. 06-0923.

Respectfully submitted for Applicant,



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